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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street, N.W.
Washington, DC 20536

[redacted]

SEP 29 2003

File: EAC-00-139-52808 Office: Vermont Service Center Date:

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in athletics. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> (A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --
>
> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term 'extraordinary ability' means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the CIS regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

According to the Form I-140, this petition seeks classification as an alien with extraordinary ability as a "Karate Instructor." 8 C.F.R. § 204.5(h) requires the beneficiary to "continue work in the area of expertise." According to the Form I-140, the petitioner intends to work as an instructor in the United States. While a Tae Kwon Do competitor and an instructor certainly share knowledge of Tae Kwon Do, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are not the same area of expertise. This interpretation has been upheld in Federal Court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

> It is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918. The court noted a consistent history in this area. Nevertheless, recently this office has recognized that there exists a nexus between playing and coaching a given sport. To assume that every extraordinary athlete's area of expertise includes coaching, however, would be too speculative. To resolve this issue, the following balance is appropriate. In a case where an alien has clearly achieved national or international acclaim as an athlete and has sustained that acclaim in the field of coaching at a national level, we can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that coaching is within the petitioner's area of expertise. Specifically, in such a case we will consider the level at which the alien acts as coach. A coach who has an established successful history of coaching athletes who compete regularly at the national level has a credible claim; a coach of novices does not. Thus, we will examine whether the petitioner has demonstrated his extraordinary ability as an instructor or as a competitor. If the petitioner has demonstrated extraordinary ability as a competitor, we will consider the level at which he has successfully instructed.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). In 1992, the petitioner received a silver medal in Tae Kwon Do, then a demonstration sport. We cannot conclude that a medal awarded in an unofficial medal event constitutes a major, international recognized award.

Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, he claims, meets the following criteria.

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

As stated above, the petitioner's silver medal in the demonstration sport of Tae Kwon Do at the 1992 Olympics in Spain is not a major internationally recognized award. Clearly, however, it is a lesser internationally recognized award. The record also contains other lesser nationally and internationally recognized awards, the most recent in 1999. As such, we concur with the director that the petitioner has submitted evidence of acclaim as an athlete relating to this criterion. While we acknowledge that nationally or internationally recognized prizes are not applicable to instructors, we accept evidence of awards won by an alien's students while under the alien's tutelage as comparable evidence to meet this criterion. The record contains no evidence that the petitioner's students have won any nationally or

internationally recognized awards. Thus, we concur with the director that the petitioner does not meet this criterion as an instructor.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

Counsel asserts that the petitioner meets this criterion through his membership on the 1992 Canadian Tae Kwon Do Olympic team. While a team is not an "association," we have considered evidence of membership on an Olympic team as comparable under 8 C.F.R. § 204.5(h)(4) because such membership is the result of multi-level national competition, supervised by national experts. There is undeniable prestige in membership on an Olympic team. The petitioner, however, competed not in an official medal event, but in a demonstration event at the 1992 Olympics. The record contains no evidence regarding the selection process for demonstration event teams. Thus, we conclude that the petitioner does not meet this criterion as an athlete. Moreover, the petitioner does not claim exclusive membership indicative of his notoriety as a Tae Kwon Do instructor.

Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

We will not disturb the director's conclusion that the petitioner meets this criterion as an athlete. The record, however, contains no media coverage of the petitioner's accomplishments as an instructor other than coverage of his five-day training session of Hayden Christensen for his portrayal of Anakin Skywalker in *Star Wars: Episode II - Attack of the Clones*. The article reveals that the petitioner was offered this opportunity because he had trained with Mr. Christensen's sister. The record does not contain sustained media coverage of the petitioner's abilities as an instructor of Tae Kwon Do competitors or coverage of the accomplishments of his students while under his tutelage. In fact, the only media coverage of the petitioner's attempts at instruction suggests that the petitioner does not have national acclaim as an instructor. The *Ottawa Citizen* reported in 1995 that the petitioner was only able to attract 80 students to his academy "while other clubs have hundreds." While this statistic may not reflect on the petitioner's ability, it certainly suggests that he has little, if any, recognition as a top instructor in Canada.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

Initially, counsel asserted that the petitioner met this criterion. Counsel did not reiterate this claim in response to the director's request for additional documentation and does not reiterate it on appeal. We find that this criterion does not relate to the petitioner's field. Nor do we find that the petitioner's competitions are comparable evidence to meet this criterion. The petitioner's awards and membership on an Olympic team have been considered above.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

Initially, counsel asserted without explanation that the petitioner met this criterion. Counsel did not reiterate this claim in response to the director's request for additional documentation or on appeal. The relevant inquiry is the nature of the position the petitioner holds, not his accomplishments in an otherwise non-critical role. The petitioner's Olympic medal in a demonstration sport has already been considered above. We cannot conclude that this medal also reflects that the petitioner played a leading or critical role for the Canadian Olympic team. While the record contains some suggestion that the petitioner operates a martial arts club, the petitioner has not demonstrated that the club enjoys a distinguished reputation nationally. As stated above, for whatever reason, the petitioner's club does not attract the number of students that other clubs do.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

Initially, while counsel did not assert that the petitioner met this criterion, the petitioner submitted letters asserting that parents "would employ" the petitioner's services as an instructor for their children for $500 per week. In response to the director's request for additional documentation, counsel asserted for the first time that the petitioner met this criterion. The petitioner submitted evidence of his college stipend and evidence that he had been offered a role in a movie for a six-figure salary. Counsel asserts that the petitioner ultimately declined this role in order to train for the 2000 Olympics.

The record contains no evidence of income actually received by the petitioner other than his academic stipend. A school stipend is not a significantly high remuneration for services in the field. Even if the petitioner had established that he was earning $500 per week for instruction as of the date of filing, the record contains no evidence of high-end salaries for Tae Kwon Do instructors. Thus, the petitioner has not established that $500 per week is indicative of national or international acclaim. Finally, even if the petitioner had established that he had received a six-figure salary for a movie as of the date of filing, the petitioner seeks to enter the United States as a Tae Kwon Do instructor. Salary for a performance in a film is not compensation for work in his field. Regardless, the petitioner has not established that a six-figure salary, which could be as low as $100,000, is comparable with the compensation offered to the most famous and well-known martial arts movie stars in the industry, such as Jackie Chan.

Beyond the evidence discussed above, the record contains letters from parents of young children under the petitioner's tutelage and the National Events Director of the U.S. National Team Coach for the U.S. Tae Kwon Do Union. On appeal, the petitioner submits a letter from the U.S. Olympic Gold Medallist in 2000, [redacted] Mr. [redacted] indicates that his coach is his own brother, not the petitioner. The ten regulatory criteria at 8 C.F.R. § 204.5(h)(3) reflect the statutory demand for "extensive documentation" in section 203(b)(1)(A)(i) of the Act. Opinions from witnesses whom the petitioner has selected do not represent extensive documentation. Independent evidence that already existed prior to the preparation of the visa petition package carries greater weight than new materials prepared especially for submission with the petition.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a Tae Kwon Do competitor or instructor to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as a Tae Kwon Do competitor, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field.

Even if we had concluded that the petitioner had established his national or international acclaim as a Tae Kwon Do competitor, the record contains no evidence that the petitioner has instructed students who have competed for significant national or international awards while under his tutelage. Thus, he has not established that Tae Kwon Do instruction is within his area of expertise as a competitor.

Finally, on appeal, counsel asserts that the director "totally disregarded or failed to consider substantial evidence that demonstrated that beneficiary's continual presence as a Taekwondo Instructor will prospectively benefit the United States." The petitioner's alleged potential to benefit the United States, as a separate issue, cannot overcome the petitioner's failure to establish national or international acclaim in his field.

In light of the above, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.